

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

COUNTY OF MAUI,

Complainant,

vs.

WAI'OLA O MOLOKA'I, INC., MOLOKAI  
PUBLIC UTILITIES, INC., AND  
MOSCO, INC.,

Respondents.

DOCKET NO. 2008-0116

PROCEDURAL ORDER

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DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

PUBLIC UTILITIES  
COMMISSION

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FILED

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

COUNTY OF MAUI,	)	
	)	
Complainant,	)	Docket No. 2008-0116
	)	
vs.	)	
	)	
WAI`OLA O MOLOKA`I, INC., MOLOKAI	)	
PUBLIC UTILITIES, INC., AND	)	
MOSCO, INC.,	)	
	)	
Respondents.	)	
_____	)	

PROCEDURAL ORDER

By this Procedural Order, the commission sets the schedule of proceedings and procedures that shall control the course of this docket. It also directs the parties<sup>1</sup> to file a stipulated Statement of Issues for this proceeding within twenty days of the date of this Order; alternatively, if the Parties are unable to stipulate, they shall file proposed Statements of Issues by the same date.

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<sup>1</sup>The parties to this docket are: Complainant COUNTY OF MAUI ("Complainant" or "County"); Respondents WAI`OLA O MOLOKA`I, INC., MOLOKAI PUBLIC UTILITIES, INC., and MOSCO, INC. (collectively, "Respondents" or "Molokai Utilities"); and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to any proceeding before the commission. See Hawaii Revised Statutes ("HRS") § 269-51; Hawaii Administrative Rules ("HAR") § 6-61-62. The County, the Molokai Utilities, and the Consumer Advocate are collectively referred to herein as the "Parties."

I.

Background

On June 16, 2008, the County filed a formal complaint<sup>2</sup> with the commission against the Molokai Utilities, alleging:

On or about May 30, 2008, the Molokai Utilities purported to provide "notice" that, unless some public or private entity assumed their operations, the Molokai Utilities would cease operations, resulting in loss of water and sewer services to some 1,200 residents, businesses, and other customers, including the County of Maui. Should the Molokai Utilities make good on this threat, its customers (including the County) will suffer immediate and irreparable harm. Indeed, as the Molokai Utilities are the only providers of drinking water and wastewater services for the western portion of the Island of Molokai, cessation of these services would cause an unprecedented public health catastrophe as well as irreparable harm to the Molokai economy.

The County is not only concerned for the health and well-being of its citizens, but also is directly affected. The Molokai Utilities are the sole source of water supplying fire hydrants along Kaluakoi Road, through Maunaloa town, and in the Kualapuu area. If water for these hydrants should be cut off, the County's ability to fight fires in these areas will be severely compromised.

In addition, the County is a customer of the Molokai Utilities. For example, the County's Department of Parks and Recreation relies on the Molokai Utilities for water for its Papohaku Beach Park and for its Kualapuu Park.<sup>3</sup>

The County further alleges that a cessation of service by the Molokai Utilities would violate HRS § 269-19, and

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<sup>2</sup>See County's Formal Complaint, filed on June 16, 2008 ("Formal Complaint").

<sup>3</sup>Formal Complaint at 1-2.

the terms and conditions of each of the Molokai Utilities' Certificates of Public Convenience and Necessity. The County requests several forms of relief from the commission.

By Order issued on July 16, 2008, the commission ordered Respondents to file an answer to the Formal Complaint within twenty days after the date of service of the order.<sup>4</sup>

On August 6, 2008, Respondents filed a letter with the commission, representing that they "simply do not have the staff, expertise or the financial resources to respond to the County's complaint at this time."<sup>5</sup> Respondents stated that if the commission nevertheless requires Respondents to file a response to the Formal Complaint, then Respondents request an extension of time to do so until ten days following the issuance of the commission's rate increase decision in Docket No. 2008-0115. Alternatively, if the commission decides not to grant an extension of time, Respondents provided a "general response" to the County's Formal Complaint in their August 6, 2008 letter.

By Order issued on September 18, 2008, the commission denied Respondents' request for an extension of time to file an answer to the Formal Complaint, and instead, deemed Respondents' "general response" to the Formal Complaint in their August 6, 2008 letter to be Respondents' answer to

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<sup>4</sup>On July 3, 2008, the West Molokai Association filed a Motion to Intervene in this proceeding, but that motion was denied by the commission on August 8, 2008. No other motions to intervene were filed in this proceeding.

<sup>5</sup>Letter dated August 5, 2008, and filed on August 6, 2008, from the Molokai Utilities to the commission, at 1.

the Formal Complaint. In addition, the commission directed the Parties to file a stipulated procedural schedule for the commission's review and approval, within thirty days from the date of the September 18, 2008 Order. Alternatively, in the absence of a formal procedural schedule, the commission directed each party to submit a proposed procedural schedule for the commission's consideration by the same date.

On October 20, 2008, the County filed a Proposed Procedural Schedule, in which the County represents that it "met and conferred with James J. Bickerton, counsel of record for [the Molokai Utilities],"<sup>6</sup> and that the dates in the Proposed Procedural Schedule were agreed upon by the Parties.<sup>7</sup>

Upon review of the Proposed Procedural Schedule, the commission finds that it does not adequately address the issues and procedural matters that are normally addressed in procedural or prehearing orders filed with the commission. The commission therefore issues its own Procedural Order, as follows.

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<sup>6</sup>The commission notes that James J. Bickerton, Esq. has not filed a Notice of Appearance of Counsel with the commission in this docket. The commission nevertheless serves Mr. Bickerton's office with a courtesy copy of this Order, but directs him to file a Notice of Appearance of Counsel if, in fact, he will be representing the Molokai Utilities in this matter.

<sup>7</sup>The Proposed Procedural Schedule, however, was only signed by the County, and not by the Molokai Utilities or the Consumer Advocate.

## II.

### Statement of Issues, Schedule of Proceedings, and Procedures

#### A.

##### Statement of Issues

The Proposed Procedural Schedule did not include a Statement of Issues. The commission will allow the Parties to propose the issues that the commission should determine in this docket. Within twenty days of the date of the Order, the Parties shall file a stipulated Statement of Issues for this proceeding; alternatively, if the Parties are unable to stipulate, they shall file proposed Statements of Issues by the same date. After reviewing the Parties' filing(s), the commission will approve a Statement of Issues, and in so doing, modify this Order.

#### B.

##### Schedule of Proceedings

The Parties shall adhere to the following schedule:

1. Deadline to submit Information Requests	November 21, 2008
2. Deadline to respond to Information Requests	December 22, 2008
3. Statements of Position	February 10, 2009
4. Reply Statements of Position	February 17, 2009

5. Witness and Exhibit Lists	February 24, 2008
6. Prehearing Conference	February 27, 2008
7. Hearing	March 6, 2009
8. Post-Hearing Briefs	Three weeks after hearing transcripts are filed
9. Post-Hearing Reply Briefs	Two weeks after Post-Hearing Briefs are filed
10. Decision and Order	To be issued by the commission

C.

Requests for Information

A party to this proceeding may submit information requests to another party within the time schedule specified in this Procedural Order. In responding to an information request, a party will not be required to provide data which is already on file with the commission or otherwise identified as a matter of public record. A party will not be required to recalculate, trend, reclassify or otherwise rework data contained in its files, unless otherwise ordered by the commission.

A party may object to responding to an information request that it deems irrelevant, immaterial, unduly burdensome, onerous, or repetitious, or which calls for the production of information claimed to be privileged or subject to protection

(confidential information). If a party claims that information requested is confidential information, and withholds production of all or a portion of such confidential information, the party will: (1) provide information reasonably sufficient to identify the confidential information withheld from the response, without disclosing privileged or protected information; (2) state the basis for withholding the confidential information (including, but not limited to, the specific privilege applicable or protection claimed for the confidential information and the specific harm that would befall the party if the information were disclosed; and (3) state whether the party is willing to provide or is providing the confidential information pursuant to a protective order.

Parties seeking production of documents notwithstanding a party's claim of confidentiality may file a motion to compel production with the commission.

Responses to the information requests of a party may be introduced into evidence subject to objections as to relevancy or materiality of the proffered material or whether the material or any portion thereof is proprietary or privileged.

The Parties are encouraged to resolve informally any question or concern as to the scope or meaning of an information request or with respect to the availability of information.

Responses to information requests which would require the reproduction of voluminous documents or materials may be made available for reasonable inspection and copying at a designated location. In the event such information is available on computer diskette or other readily usable electronic medium, the party responding to the information request shall make the diskette or such electronic medium available to all Parties and the commission.

The responses of each party will adhere to a uniform system of numbering. For example, the first information request submitted by the Complainant shall be referred to and designated as "Complainant-IR-1," and a response to this information request shall be referred to and designated as "Response to Complainant-IR-1."

D.

Admission of Fact and Matters of Public Record

Documents identified as matters of public record may be offered as evidence to avoid unnecessary proof and to facilitate these proceedings. The following documents may be identified as matters of a public record: (1) public financial reports and previously submitted written testimonies and exhibits filed with the commission; (2) published decisions issued by state and federal agencies; (3) published scientific or economic

statistical data, material, and textbooks, and technical or industrial journals; and (4) specified parts of the official record of previous proceedings of the commission.

The matter intended to be offered as evidence must be clearly identified by reference to the date and place of publication and the file or docket number. The identified document must be available for inspection by the Parties. Parties will have the right to explain, qualify, or conduct cross-examination with respect to the identified material.

From time to time, the Parties may enter into stipulations that such documents, or any portions of such documents, may be introduced into evidence in this case.

E.

Copies of Documents

All filings by the Parties in this docket shall require the following copies:

Commission	Original + 8 copies
Consumer Advocate	3 copies
Complainant	1 copy
Respondents	1 copy

All information requests and responses, notices of motions, motions, memoranda, other requests for commission action, briefs, and the like, shall comply with the formatting requirements prescribed pursuant to HAR § 6-61-16 and shall be filed at the office of the commission in Honolulu within

the time limit prescribed pursuant to HAR § 6-61-15. Copies of all filings should be sent to the other Parties by hand delivery or United States mail (first class, postage prepaid).

F.

Communications

HAR § 6-61-29 concerning ex parte communications is applicable to any communications between a party and the commission. However, the Parties may communicate with commission counsel through their own counsel or designated party representative only as to matters of process and procedure.

Communications between the Parties should either be through counsel or through designated party representatives. All documents filed in this proceeding shall be served on the opposing party and counsel, as provided in Section E, "Copies of Documents," above.

G.

General

This Procedural Order shall control the course of this proceeding, unless modified by the Parties in writing and approved by the commission consistent with HAR § 6-61-23, to the extent applicable, or upon the commission's own motion.

III.

Orders

THE COMMISSION ORDERS:

1. This Procedural Order is adopted herein, and shall control the course of this proceeding, unless modified by the Parties in writing and approved by the commission, or upon the commission's own motion.

2. Within twenty days of the date of this Procedural Order, the Parties shall file a stipulated Statement of Issues for this proceeding; alternatively, if the Parties are unable to stipulate, they shall file proposed Statements of Issues by the same date.

DONE at Honolulu, Hawaii JAN - 5 2009.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By Carlos P. Caliboso  
Carlito P. Caliboso, Chairman

By John E. Cole  
John E. Cole, Commissioner

APPROVED AS TO FORM:

Kaiulani Kidani Shinsato  
Kaiulani Kidani Shinsato  
Commission Counsel

Leslie H. Kondo  
By  
Leslie H. Kondo, Commissioner

2008-0116.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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